IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Tuesday, the Twentieth day of July, two thousand and four

PRESENT

The Honourable Sri Justice V.Eswaraiah

WRIT PETITION No.19746 OF 2003

BETWEEN:

Mrs.P.Rekha Evangeline, Junior Lecturer, CBM. Junior College for Women, Kakinada, East Godari District..

Petitioner

And

1. The Commissioner and Director of Intermediate Education, Nampally, Hyderabad.
2. The Regional Joint Director of Intermediate Education, East Godavari District, Rajahmundry.
3. The District Vocational Educational officer, Rajahmundry East Godavari District.
4. The Correspondent, CBM Junior College for Women, Kakinada, East Godavari District.
5. Mrs.M.B.Jayanthi Incharge Principal CBM. Junior College for Women, Kakinada, East Godavari District.
6. The Principal Secretary to Government, Higher Education, Secretariat, Hyderabad.
7. The Chief Secretary to Government of Andhra Pradesh, Hyderabad.

(RRs.6 and 7 are impleaded as per Court order dt.16-4-2004 in WP.No.19746/03).

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court

will be pleased to issue an order, direction especially one in the nature of a writ of mandamus, declaring the action of the respondents 1 and 2 in not taking steps against the 4th respondent for implementing their instructions for filling up of the post of Principal and the action of the 4th respondent in not following the instructions of respondents 1 to 3 in filling up the post of Principal in 4th respondent institution as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India, and to further declare the action of the 4th respondent in appointing 5th respondent as in-charge principal as illegal, arbitrary and contrary to the instructions and further declare that the petitioner is entitled to be appointed as principal.

For the Petitioner: Mr.M.Surender Rao, Advocate.

For the Respondent No.1: Mr. M.Surender Rao

For respondents 2 to 4: G.P. for Higher Education.

For respondent No.5: Mr.Sai Ram

For respondents 6 and 7: Mr.D.V.Seetharama Murthy.

The Court made the following:

ORDER :

The petitioner seeks to issue a writ of mandamus, declaring the action of the respondents 1 and 2 in not taking steps against the 4th respondent for implementing their instructions for filling up of the post of Principal and the action of the 4th respondent in not following the instructions of respondents 1 to 3 in filling up the post of Principal in 4th respondent institution as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India, and to declare the action of the 4th respondent in appointing 5th respondent as in-charge principal as illegal, arbitrary and contrary to the instructions of the Government and to further declare that the petitioner is entitled to be appointed as principal.

This Court by interim order dated 7-1-2004, directed the respondents to forthwith post the petitioner as In-charge Principal by reverting the 5th respondent as Junior Lecturer, pending disposal of the Writ

Petition. On the Vacate Stay Petition filed by the 4th respondent, this Court by order dated 16-4-2004 after hearing the concerned parties, directed the first respondent i.e., the Commissioner and Director of Intermediate Education to file a counter affidavit, explaining why the aided post of a principal in CBM Junior College for Women, Kakinada, East Godavari District has not been filled up on a regular basis since 1990 when the post was admitted to grant-in-aid. It is also noticed that the post of a principal in CBM Junior College for Women, Kakinada, East Godavari District was admitted to grant-in-aid in the year 1990 and for 14 years now, no regular principal has been recruited and appointed to the college. The functions of the principal are being discharged on an adhoc/incharge basis. The 5th respondent Mrs. Jayanthi having been appointed as in-charge principal, though she being junior to the writ petitioner, the problem has started and the writ petition is instituted.

I have heard the learned counsel for the petitioner and also the learned counsel for the respondents. Admittedly, the writ petitioner is senior to the 5th respondent. The date of birth of the petitioner is 29-1-1954 and she was regularly appointed on 20-10-1983. The college was admitted in grand-in-aid with effect from 16-4-1990, whereas the date of birth of the 5th respondent is 19-9-1955 and she was regularly appointed on 21-10-1983 i.e., a day later to the petitioner. Thus, the petitioner is senior to the 5th respondent. Therefore, this Court after hearing both parties, directed 4th respondent to forthwith appoint the petitioner as In-charge principal by reverting the 5th respondent as Junior Lecturer.

The first respondent filed a counter, admitting that the petitioner has joined as Junior Lecturer in History (un-aided) on 20-8-1983 in 4th respondent college and the said college was admitted into grant-in-aid with effect from 16-4-1990. It is further stated that the 4th respondent was directed to submit proposals for filling up of principal post as per rules and also explain the reasons for not taking steps for

filling up the post of the principal. The 4th respondent vide her letter dated 5-5-2002, without showing any reason for not filling the post of the principal, requested the first respondent to give permission to fill up the vacancies of Teaching and Non-Teaching posts instead of submitting proposals for filling up the principal post. The first respondent vide his proceedings dated 21-11-2002 directed the 4th respondent to show cause as to why action should not be initiated by appointing a Special officer to the college under Section 24 of A.P.Education Act, 1982 and asked her to submit her reply in 10 days. In reply to the said proceedings, the 4th respondent vide her letter dated 18-12-2002 submitted the seniority list of Junior Lecturers of the collage, in which the petitioner was shown to be the senior most. The 4th respondent wanted to recruit the post of the principal by direct recruitment. In that connection, the first respondent stated that it is not open for the 4th respondent to fill up the post of principal by direct recruitment. As per orders of the Government in G.O.Ms.No.119, dated 22-3-1991 and G.o.Ms.No.127, dated 7-6-1993, the post of principal has to be filled up by promotion from among the senior most junior lecturers and not by direct recruitment. Therefore, the first respondent vide his proceedings dated 27-2-2003, instructed the 4th respondent to fill up the post of principal by way of internal promotion from the category of Junior Lecturers of the college. As there was no response from the 4th respondent, the first respondent vide his proceedings dated 20-5-2003 superceded the management of CBM Junior College for Women, Kakinada in exercise of the powers under Section 24(3) of the A.P. Education Act and T.Krishna Rao, District Vocational Education Officer, Rajahmundry has been appointed as Special Officer to the said college. Questioning the said order of the first respondent in superceding the management and appointing the special officer, the first respondent filed W.P.No.10381/2003 and obtained order of suspension of the said proceedings. The first respondent vide his proceedings dated 9-7-2003 has nominated the Regional Joint Director of Intermediate Education, Rajahmundry as a Government

nominee to be in the Selection Committee for selection to the post of Principal of the 4th respondent collage as per rules in force. The 4th respondent vide order dated 19-1-2004 appointed the petitioner as In-charge principal of the collage and the 5th respondent has been relieved from the post of in-charge principal and the petitioner has taken charge as In-charge Principal on 19-1-2004 and working till date.

As per the proceedings of the Director of Higher Education, A.P., Hyderabad in Dis.No.680/IC5-2/86, dated 7-3-1986, the Correspondents of all the Private Junior Colleges in the State were requested to keep the senior most Junior Lecturers in full additional charge of the post of Principal, wherever the post is lying vacant till a regular principal is appointed. Admittedly, the petitioner is the senior most Junior Lecturer and working in 4th respondent college, therefore the action of the 4th respondent in not keeping the petitioner as In-charge principal of the college is illegal and contrary to the rules. As the petitioner is working as In-charge Principal pursuant to the interim direction of this Court with effect from 19-1-2004, he shall continue to work as such till the regular principal is appointed.

The Writ Petition is accordingly allowed with costs payable to the petitioner by the 4th respondent. Now that the Government has already nominated the Regional Joint Director of Intermediate Education, Rajahmundry (2nd respondent) as a Government nominee to be in the Selection Committee for selection to the post of Principal of the 4th respondent college as per rules in force, the respondents 2 and 4 are directed to fill up the post of the Principal by promotion from among the senior most Junior Lecturers, within two months from the date of receipt of this order.

V.ESWARAIAH,J

20th July, 2004.

Shr/Ksn

Asst.Registrar.

To

1. The Commissioner and Director of Intermediate Education, Nampally, Hyderabad.
2. The Regional Joint Director of Intermediate Education, East Godavari District, Rajahmundry.
3. The District Vocational Educational officer, Rajahmundry East Godavari District.
4. The Correspondent, CBM Junior College for Women, Kakinada, East Godavari District.
5. Mrs.M.B.Jayanthi Incharge Principal CBM. Junior College for Women, Kakinada, East Godavari District.
6. The Principal Secretary to Government, Higher Education, Secretariat, Hyderabad.
7. The Chief Secretary to Government of Andhra Pradesh, Hyderabad.
8. Two CCs to G.P.for Higher Education, High Court Buildings, Hyderabad (OUT)
9. Two CD copies.